



WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

IMPLEMENTATION PLAN FOR THE ADOPTION OF
Chapter 173-505 WAC,
Instream Resources Protection and Water Resources Program,
Stillaguamish River Basin,
Water Resource Inventory Area (WRIA) 5

August 2005

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**Implementation Plan for Chapter 173 - 505 WAC
Instream Resources Protection and Water Resources Program
Stillaguamish River Basin, Water Resource Inventory Area (WRIA) 5**

This implementation plan is in response to RCW 34.05.328 wherein the statute requires, “The plan shall describe how the agency intends to:

- (a) Implement and enforce the rule, including a description of the resources the agency intends to use;
- (b) Inform and educate affected persons about the rule;
- (c) Promote and assist voluntary compliance; and
- (d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.”

Chapter 173-505 Washington Administrative Code (WAC) has the following sections:

- WAC 173-505-010 General provisions--Authority and applicability.
- WAC 173-505-020 Purpose
- WAC 173-505-030 Definitions
- WAC 173-505-040 Establishment of stream management units.
- WAC 173-505-050 Establishment of instream flows.
- WAC 173-505-060 Lakes and ponds
- WAC 173-505-070 Stream closures
- WAC 173-505-080 Future stock watering
- WAC 173-505-090 Reservation of permit-exempt ground water for future domestic uses
- WAC 173-505-100 Maximum allocations
- WAC 173-505-110 Future permitting actions
- WAC 173-505-120 Alternative sources of water
- WAC 173-505-130 Establishment of trust water rights program.
- WAC 173-505-140 Future changes and transfers
- WAC 173-505-150 Compliance and enforcement
- WAC 173-505-160 Appeals
- WAC 173-505-170 Regulation review
- WAC 173-505-180 Map.

1. How the Agency intends to implement and enforce the rule (RCW 34.05.328(3) (a)).

Implementation will consist of education and outreach, technical assistance, water right permitting, compliance and enforcement, data collection, and information management. The work for implementation will be done primarily at the regional level with existing staff resources and with support from colleagues at Ecology’s headquarters in Lacey. Staff resources for rule implementation are expressed in full time equivalents (FTEs).

Education and outreach

The key implementation component is outreach and communication. Ecology will continue to do outreach and communication with the counties, cities, water utilities, well drillers, interest groups, and property owners to inform them on the rule. Staff resources for rule specific and general water law educational material, oral presentations, and media outreach is estimated to be 0.1 FTEs and a mix of headquarters and regional staff.

Technical assistance and water right permitting

Five employees are assigned to water right permitting in the Northwest Regional Office. Prioritization of work done by existing staff is not affected by this rule. At this time the Program's focus on changes to water rights is expected to continue and no FTE's will be specifically assigned to address the pending water rights in the basin. Existing staff will make water right permit decisions, respond to telephone calls for information and technical assistance, and address municipal water supply issues in the Stillaguamish basin. Essentially all the sections of the rule will be implemented by the staff to some extent, especially for questions or technical assistance.

Reservations established in the rule are for the domestic needs of residences and small businesses that do not have access to a public water supply. The water used from the reserve will be withdrawals under the ground water permit exemption. After Ecology receives a letter of acknowledgement from the local governments, the reserve will be available to use as specified in section 090(2) (d). Ecology will develop a link through the existing well construction and Notice of Intent website to inform people whether or not they are in the reserve area and whether there is water available in the reserve. The person wanting the Notice of Intent will also be able to print out the conditions of use for the domestic reserve water. In January and February of each year Ecology will work with the local permitting agencies through information requests for data related to the number of permits and subdivision approvals issued. The information will be used along with recorded well logs to account for reservation use. Accounting will be done on an annual basis and the notices provided for in the rule will be done in March of each year.

The stockwater reserve for surface water will be accessed by persons applying for a water right to divert water for stock. These actions will be part of the normal water right permitting work load. Ground water reserved for stockwatering will be accessed by either ground water permit exempt wells or persons filing for a ground water permit for stockwatering. In both the domestic, small business and stockwater reserves, there will be accounting to keep track of the volumes allocated. Ecology will request the local governments distribute our educational material at the permitting counters and health districts to people who apply for a building permit.

Compliance and enforcement

One employee (1.0 FTE) in the NWRO is responsible for compliance work in the region, a seven county area. The Program will focus its efforts to achieve voluntary compliance with the Stillaguamish rule through technical assistance, education, outreach, training and well driller licensing activities. After the initial outreach on the rule, compliance and enforcement activities in the basin will be addressed on an as needed basis. Enforcement under chapter 173-505 WAC will follow the procedures outlined in the rule and developed in the Water Resource Enforcement Policy, (see policy 2005 at <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol2005.pdf>.)

Enforcement actions can include curtailment of unauthorized uses and ensuring the exercise of water rights consistent with the rule. The regional inspectors will respond consistent with the severity of the violation, using professional judgment to screen complaints and respond as appropriate. The Water Resources Program will take enforcement actions where informal compliance efforts are not successful, immediately where risks to safety, public health and environmental health are high, and/or where action is requested by other resource protection agencies.

If the goal of voluntary compliance cannot be met, enforcement responses will be escalated as provided for in the rule and RCW 90.03.605. The first response of the department will be to offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law. If education and technical assistance do not achieve compliance then Ecology will issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment of existing water rights occurred or no harm was done.

Data collection and information management

Implementation of several sections of the rule will require the development of tracking or accounting systems. These sections include future stock watering, reservation of permit-exempt ground water for future domestic uses, maximum allocations, and future permitting actions. Staff resources of 0.2 FTE at the regional office will be dedicated to develop and implement GIS mapping and data sets to account for use of reserved waters and the maximum allocations by sub basin. Future data related to specific water right actions for new rights or changes to rights will be captured in the existing Water Right Administration Tracking system under existing resources.

2. How the Agency intends to inform and educate affected persons about the rule (RCW 34.05.328(3)(b)).

Informational meetings

We are proposing a series of informational sessions, geared to different affected groups. First, of course, is the general public, especially those who will use water from the reserve as they develop their property. One informational workshop on the rule will be held in Arlington. We will also reach out to and meet with well-drillers, realtors associations, local health districts, and local governments, water utilities, and to other groups that request information.

Ecology staff has already spoken at two statewide trainings for well-drillers, to inform them about the water resource management rules being developed, including the Stillaguamish. The presentations described the purpose and content of the rules, and specifically addressed the anticipated impact of the reserves on the business of well-drilling.

Written materials

In addition to face-to-face sessions, we will prepare various written materials, such as Question and Answers and Focus sheets. This information will be distributed through our electronic Listserv and through distribution lists provided locally, available in various public places (ex: libraries and county offices), and will be on our internet site. One or more press releases/articles will be submitted for publication in the local paper(s). We will also supplement various existing materials, such as the Homeowners Packet which is used by the public for well-drilling information and guidance.

3. How the Agency intends to promote and assist voluntary compliance for this rule (RCW 34.05.328(3) (c)).

The Program will focus its efforts to achieve voluntary compliance with the Stillaguamish rule through technical assistance, education, outreach, and training and well driller licensing activities. When Ecology is providing the education and outreach, we concurrently promote voluntary compliance. Many of the activities are the same. For example, a dialogue promoting voluntary compliance for a permit subject to an instream flow water right starts at the time of water right application. The permit writer must and will work with the applicant to ensure a common understanding of the terms and conditions of any permit issued.

Outreach and communication will be the key tools here. The Water Resources Program is preparing a Q&A on the rule generally, and will develop more specific additional materials as needs are further identified. Water Resources staff will work with the county and other to provide informational sessions for the general public and/or specifically affected groups such as the well-drillers. Information on the rule will be on the Ecology website, and will be distributed through a Listserv.

4. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome (RCW 34.05.328(3)(d)).

Instream flow achievement

The purpose of this rule is to retain perennial rivers, streams and lakes in the Stillaguamish River basin with the instream flows and levels necessary to protect and preserve instream resources and to provide reliable and adequate water for certain future out-of stream uses. Ecology will do a trend analysis to evaluate the number of days the instream flows are satisfied at the various control points and compare that to our flow achievability. Ecology recognizes the establishment of an instream flow in and of itself does not add more water to flow limited streams or stream reaches. Ecology will work with basin residents to address flow issues raised in the salmon recovery plan.

Reservation

In one year Ecology will evaluate whether or not the reservation is achieving its intended purpose by reviewing how many affected local governments have acknowledged the reservation and how consistent their decision making is with applicable provisions of the rule. The effectiveness of the reservation for rural domestic and small business water use as a water management tool will be evaluated in five years time. Ecology will seek to do this evaluation in concert with local governments. That evaluation could include known increase in impacts to stream flow, areas where water availability may be an issue, future land use planning issues or how many ground water permit exempt wells use reserved water and how many are developed without using reserved water. The rule includes a provision that permit-exempt ground water uses may be metered if more accurate water use data is needed, see WAC 173-505-170. Therefore Ecology will consider the need for more accurate information if there is too much uncertainty or disagreement regarding accounting of water related to the reservation.

Instream flow water rights

The rule upon its effectiveness creates the water rights for the instream flows as provided by statute. So in one sense Ecology has almost immediate feedback the rule did what it was intended to do on this point. However, Ecology will evaluate whether or not the rule achieves the purpose of protecting established instream flows by looking at new interruptible water rights that have been issued and how they comply with the rule.

5. How the Agency intends to train and inform Ecology staff regarding new rule or rule amendment.

A two hour training and discussion specific to this rule will be held at Northwest Regional Office for permit writers and well construction staff in the first month after rule adoption. Training will be repeated as needed, since their work will be directly affected by the rule. Information sessions can be scheduled for Water Resources and other agency staff if requested.

6. Identify new supporting documents that need to be developed because of a new rule.

Q & A(s)

Focus sheet(s) on rule adoption and one specific to the reserve for domestic/business use

Press releases

Web updates/information

If you require this publication in an alternate format contact the Water Resources Program at 360-407-6600. For persons with a speech or hearing impairment, please call 711 for relay service or 800-833-6388 for TTY.